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2001

# The State of Utah v. Andrew Farrow : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,  
Plaintiff-Respondent

vs.

ANDREW FARROW  
Defendant-Appellant

Case No. 14011

BRIEF OF APPELLANT

Appeal from a dismissal of a Writ of Habeas Corpus in Third  
Judicial District Court, in and for Salt Lake County, State of Utah, this  
Honorable Stewart Hansen, Sr. Presiding.

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THE DISTRICT COURT DID NOT HAVE JURISDICTION  
TO PROCEED ON THE CHARGE OF MANSLAUGHTER SINCE  
THERE WAS NO WAIVER OR HOLDING OF A PRELIMINARY  
HEARING AND NO EVIDENTIARY INQUIRY TO DETERMINE  
IF THE FACTS CONSTITUTING MANSLAUGHTER  
WOULD BE ENCOMPASSED WITHIN THE DEFINITION  
OF MURDER IN THE SECOND DEGREE.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH

Plaintiff-Respondent

vs.

ANDREW FARROW

Defendant-Appellant

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Case No.

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BRIEF OF APPELLANT

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STATEMENT OF THE NATURE OF THE CASE

Appellant appeals from an Order granting Respondent's Motion to Dismiss his petition for a Writ of Habeas Corpus.

DISPOSITION IN THE LOWER COURT

In criminal number 25767 the petitioner was charged with murder in the second degree. The matter was set for trial October 15, 1973. On the day of the trial the petitioner plead guilty to manslaughter. The petitioner on October 18, 1974 filed a petition for a Writ of Habeas Corpus contesting the legality of pleading guilty to Manslaughter on the grounds that it is not a lesser included offense of second degree murder unless supported by the evidence which is completely lacking in a guilty plea.

## RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the lower Court's decision dismissing his Writ of Habeas Corpus.

## STATEMENT OF FACTS

On October the 15th, 1975 the petitioner plead guilty to manslaughter. The guilty plea to manslaughter was treated as a lesser included offense arising out of the complaint and information charging second degree murder. There was no judicial inquiry as to whether or not the facts constituting manslaughter would be encompassed within the definition of murder in the second degree.

## ARGUMENT

THE DISTRICT COURT DID NOT HAVE JURISDICTION TO PROCEED ON THE CHARGE OF MANSLAUGHTER SINCE THERE WAS NO WAIVER OR HOLDING OF A PRELIMINARY HEARING AND NO EVIDENTIARY INQUIRY TO DETERMINE IF THE FACTS CONSTITUTING MANSLAUGHTER WOULD BE ENCOMPASSED WITHIN THE DEFINITION OF MURDER IN THE SECOND DEGREE.

It is the petitioners contention that manslaughter is not necessarily a lesser included offense of second degree murder without some showing that the lesser offense is included within the definition of the greater offense and be part thereof. State v. Rohletter 108 Utah 452, 160 P2d 763 (1945). A reading of the second degree murder elements contained in Section 76-5-203 Utah Code Annotated 1973 and the manslaughter elements in Section 76-5-203 Utah Code Annotated 1973 clearly reveals that there are

no common elements that exist between the two offenses without some inquiry by the court as to what the facts were.

Since manslaughter is not necessarily a lesser included offense of second degree murder in the instant case the District Court lacked jurisdiction to proceed on the manslaughter question as no preliminary was heard or waived. State v. Jensen 103 Utah 2178, 136 P2d 949 (1943) State v. Spencer 15 Utah 149, 49 P302 (1897), State v. Leek 85 Utah 531, 39 P2d 1091 (1934) State v. Johnson 100 Utah 316, 114 P2d 1034 (1941). It is clear that the District Court does not have jurisdiction unless a preliminary hearing is had or waived and a proper information is filed pursuant thereto. State v. Freeman 93 Utah 125, 71 P2d 196 (1937). In the instant case there was no information filed alleging manslaughter nor was a preliminary hearing accorded or waived as to the offense of manslaughter contrary to the petitioner's constitutional and statutory rights. Article 1 Section 13 Constitution of Utah 77-16-1 Utah Code Annotated (1953).

Respectfully Submitted,

LYNN R. BROWN